

Honorable Douglas R. Beach

April 01, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KEILEE FANT, et al,

Plaintiffs,

vs.

Case No. 4:15-CV-00253-AGF

THE CITY OF FERGUSON,

Defendant.

/

REMOTE VIDEO-RECORDED DEPOSITION OF
HONORABLE DOUGLAS R. BEACH
{Pages 1 - 250}

Thursday, April 1, 2021
9:00 a.m. CST - 4:14 p.m. CST
U.S. Legal Support, Inc.
225 Water Street
Suite 1450
Jacksonville, Florida 32202

Stenographically Reported By:
Deanne M. Moore, RMR, CRR

April 01, 2021

1 Q Let's say, if we were to picture a pie chart
2 here, what percentage of your work during -- from '05 to
3 '16 was related to family court?

4 A That would be 99.

5 Q Okay. That's helpful.

6 You said when you were a presiding judge, you
7 did preliminary hearings a little bit?

8 A Presiding judge, you do a little bit of
9 everything. You know, you get writs, you get warrants,
10 you get walk-in issues, but one of the things that you
11 do is preliminary hearings. I did preliminary hearings
12 in the beginning for about three or four months, but
13 they got to be a bit more than -- a lot more than I --
14 that was handled. Most of the preliminary hearings were
15 handled by the associate circuit court judges that are
16 in -- the two of them, but I would get a couple of the
17 -- some of the -- some of the spillovers.

18 Q And what's an -- I'm going to -- and I -- I
19 understand that pauses and interruptions can be a little
20 bit more difficult, and there may be times where I -- I
21 interrupt you only because I want to make sure, as you
22 mentioned in the beginning, how long this is going to
23 be -- I want to really direct us to -- to things that I
24 think are going to be the most important, okay?

25 You mentioned you did preliminary hearings.

1 years of supervision that we're talking about?

2 A Not -- no.

3 Q Okay. Are you holding yourself out to be an
4 expert in constitutional law?

5 A No.

6 Q Are you holding yourself out to be an expert
7 in -- in municipal law?

8 A I think I am.

9 Q Okay.

10 A Yes.

11 Q So you believe that you are an expert in
12 municipal law. Very good.

13 Are you holding yourself out to be an expert
14 in -- in Missouri statutory interpretation?

15 A Yes. In this case I am, yes.

16 Q Okay. Before you were retained -- and we'll
17 talk plenty about how and when you were retained, but
18 before you were retained in this case, do you think that
19 you already possessed the necessary qualifications to be
20 an expert?

21 A I do.

22 Q Okay. Do you think that you possessed the
23 necessary -- like the -- the important underlying facts
24 in order to serve as an expert, or did a lot of those
25 facts -- did you become aware of a lot of those facts

April 01, 2021

1 A No. I think -- I was retained as a -- in a
2 family law case that ended up resolving itself, so I
3 didn't end up being -- having to -- so you say was I
4 retained. Yes, I was retained, but it didn't go
5 anywhere, so . . .

6 Q Uh-huh. Okay. When was that?

7 A When?

8 Q Yes.

9 A Well, it had to be after 2018. I'm pretty sure
10 it was like the end of '18, first part of '19.

11 Q Okay. And you have not been retained or served
12 as an expert in any other cases besides that one family
13 law case?

14 A No. After that I decided that I wasn't going
15 to in general get involved with the family law
16 expertise, being an expert.

17 Q Okay. When you were at St. Louis County when
18 you were at the 21st Judicial Circuit, you served on
19 something called the jail population review team, right?

20 A Correct.

21 Q What was the purpose of that team?

22 A Well, the county had -- I was a participant in
23 the McArthur Foundation activities with regards to
24 pretrial confinement, and as the presiding judge in --
25 back in 2018, one of the things that we would do, if you

1 were a member of the team, we would work on pretrial
2 issues in St. Louis County.

3 And we would -- having gone to a meeting say --
4 there was some other cities or counties or jurisdictions
5 which had these pretrial committees to go in and to see
6 if you could identify reasons for people being held in
7 pretrial for 90 days, 100 days, something like that.

8 So as the presiding judge, again, I convened a
9 -- this committee. And it included everybody that is
10 involved with the criminal justice system from the
11 jailers to the prosecutors to the court to the
12 administrators to the clerks, to all -- everybody, the
13 police departments, for reviewing that and see if we
14 could find ways and to assist to reduce the length of
15 time it took for people to be held in pretrial
16 confinement in St. Louis County.

17 Q Okay. So if I understand correctly, the
18 purpose of that team was to -- was to reduce the amount
19 of time that people were spending in jail before trial;
20 is that right?

21 A That's correct?

22 Q Why is that goal important?

23 A Why wouldn't it be important? That people
24 should be not in -- confined unless they have to be, and
25 administration shouldn't be part of the reasons that

April 01, 2021

1 Q Okay. And I know we talked about your private
2 practice, and I think we agreed that -- I think you said
3 that most of your private practice was family law
4 related, right?

5 A Yes.

6 Q Was some of it as a practitioner in the
7 municipal courts?

8 A No. Very little. Somebody gets a ticket,
9 someone that you know, can you help me. I'd go to --
10 some young kid next door that got picked up with
11 drinking in the Irish Day Parade or something in the
12 city so I went to municipal court, so, yeah, that kind
13 of stuff, but maybe five.

14 Q You're saying five -- five total incidents?

15 A Yeah.

16 Q So very few; is that fair to say?

17 A Very few.

18 Q Okay. During your time as supervising judge,
19 how many -- how many physical courts do you think you
20 visited?

21 A Well, probably less than half, but probably
22 pretty close to half, so, I don't know. There's --
23 actual divisions -- some are -- you know, Normandy has I
24 think six courts there. St. Ann has six courts there;
25 you know, that's 12. But I have been -- probably

April 01, 2021

1 say how if I fit into whatever the defense process is.

2 They asked me to do something. I did it.

3 Q Okay. And so in terms of your -- your opinion
4 about how it fits in, you don't have one; is that fair
5 to say?

6 MR. HELLMICH: Same objection.

7 A Yes. I'm not a strategist. I'm just doing
8 what I'm asked to do.

9 Q Okay. Do you think that your knowledge is
10 going to help the trier of fact to understand the
11 evidence in this case?

12 MR. HELLMICH: Same objection.

13 A I do.

14 Q I'm sorry?

15 A I do.

16 Q You do? Can you tell me how?

17 MR. HELLMICH: Same objection. I don't know
18 how he -- I don't know how he can answer that.

19 A I'm speculating as to how I help, and, you
20 know, I can't tell you how I specifically help. I may
21 or may not. Nobody may pay attention to it at all. I
22 don't know.

23 Q Okay. But what do you think that the -- I
24 mean, your report lays out a series of, you know -- it's
25 20 pages long, and what do you think the benefit is to

1 the trier of fact in order to -- as we go through this
2 case, what do you think that that report is bringing to
3 the trier of fact?

4 MR. HELLMICH: Same objection. I don't think
5 he was engaged to -- on that particular issue,
6 so . . .

7 A I don't -- I don't think I can have an opinion.
8 I don't -- I don't know. I think that it's -- those are
9 facts, was -- were they following the law or not.
10 That's a -- that's a question that someone needs to
11 know, and can a layperson -- or do you need someone that
12 knows something about it. That's all I -- that's all I
13 know.

14 Q Okay. And so your opinions are based on
15 whether or not you think that Ferguson's court was
16 following the law or not, right?

17 A Correct.

18 Q Okay. Do you hold yourself out to be an expert
19 on -- on the operations of the Ferguson court from 2010
20 to present?

21 A No.

22 Q On how many occasions have you been to the
23 Ferguson municipal court when it was in session?

24 A I believe twice, maybe.

25 Q Do you remember when those occasions were?

1 or doing most of those things even before they passed
2 the legislature.

3 Q Okay.

4 A And so post and before.

5 Q So you said one of the things that you were
6 asked to do is you were asked to -- to determine what
7 was happening in Ferguson at the time, right?

8 A Yeah, I believe I said that, based upon what
9 Judge Brockmeyer said he did.

10 Q Okay. And so I want to make sure we understand
11 that -- that your only understanding of what was
12 happening at the time is based on what --

13 Well, let me -- let me rephrase the question so
14 it's better.

15 If we're talking about your understanding of
16 what was happening at the time, what is that -- that
17 knowledge based on?

18 A Primarily upon Judge Brockmeyer's deposition
19 that you took.

20 Q Okay. What else?

21 A Primarily that because he -- he's the evidence
22 of the -- the part that I'm speaking to and -- and that
23 how he -- how he did it. If there's other evidence,
24 that's what I relied on his deposition.

25 Q Okay. So what other evidence besides his

1 the manner in which Ferguson's court conducted indigency
2 determinations?

3 A My understanding is that if Judge Brockmeyer
4 gave somebody -- or was fining them, that he had a
5 conversation with them about their ability to pay, and
6 if they couldn't pay it, then he would give them time in
7 which to pay it, and he would direct that they would --
8 they would then come on Fridays to make payment once a
9 month. If they did not come on that Friday and make a
10 payment, then they were to come to court on the
11 Wednesday -- the first Wednesday of the month and
12 explain to the court why they couldn't or didn't make
13 the payment.

14 Q Okay. And what is your understanding of this
15 area, what -- what is that based on?

16 A Brockmeyer's testimony.

17 Q Okay. Any other sources?

18 A No.

19 Q And you said -- my -- I believe you said that
20 your understanding was that Brockmeyer would have a
21 conversation with people who pled guilty; is that
22 correct?

23 A Whether -- when he was going to fine somebody
24 or do something that would cause money to be paid, he
25 would have -- he would have a conversation about their

April 01, 2021

1 Q My question is: What principles and methods
2 did you use in order to -- to draft this report?

3 MR. HELLMICH: Object to the form of the
4 question as being vague.

5 A I don't understand what you mean by -- maybe
6 you're asking for -- I don't understand your question.

7 Q Okay. Well, when you sat down to write the
8 report, what were some of the -- what were some of the
9 ground rules; what were some of the things that you were
10 trying to cover?

11 A Well, when I sat -- when I sat to write it, it
12 was a matter of sitting down, and my understanding, it
13 was supposed to be somewhat of a history of myself and
14 how I get there.

15 And then the question was looking at these --
16 your two sections of your two class -- what we call
17 class 1 and class 2 and take those and then analyze
18 them, so I read them over looking at the issue of the
19 state statutes rather than any allegations of what
20 somebody said happened or didn't happen.

21 And then based upon -- I was asked to say
22 whether or not those -- what was the law at the time
23 that Judge Brockmeyer was the judge, and since your
24 lawsuit goes from until today or whatever, then the post
25 2000- -- the SB5 type of an approach.

1 Q Okay. And you've said you've read the -- the
2 complaint in this case, correct?

3 A Yes, right.

4 Q Do you believe that your report refutes any of
5 the claims or allegations in the complaint?

6 MR. HELLMICH: Object, calls for an opinion
7 that's outside the scope of his engagement, I think.

8 A My report talks about very specific issues, and
9 to -- whether that refutes it or not, I'm not sure.
10 And -- and I think it depends on how you want to read
11 the -- the petition.

12 It's very narrow, I thought, in terms of the
13 overall what's been -- you know, like you've been asking
14 me a lot of questions that I don't think had anything to
15 do with what I was asked to do, but they -- I understand
16 how they may fit into your overall context.

17 So I don't know that I think it refutes it. I
18 just think it says what it -- that -- what I interpret
19 the law to have said, and it's going to be for somebody
20 else to apply and decide whether or not what Judge
21 Brockmeyer did in particular -- because I have looked at
22 both before and after, but it's -- really the issue is
23 before, I believe.

24 But even if it's not, I still think that --
25 that the court, as I understand it, is in compliance

1 with the state law. And I'm talking state law, not the
2 Constitutional law.

3 Q All right. And so there's nothing that -- I
4 just want to sort of summarize to make sure I'm
5 understanding it correctly.

6 There's nothing you can think of in your report
7 that refutes any of the allegations in the complaint; is
8 that fair to say?

9 MR. HELLMICH: Same objection. I mean, the
10 complaint is 50 pages long. I don't know how he
11 could possibly answer that.

12 A I don't -- I don't believe so. I mean, I
13 just -- I don't -- I didn't read the -- my -- I didn't
14 see my part of it as doing anything but fact finding or
15 making -- opine as to this one issue, were they or
16 weren't they. That's not whether -- I'm not sure that
17 even if -- I don't know. I don't know if that refutes
18 it or not. I really don't.

19 Q Okay.

20 A My concern -- my concern was to read it and
21 say -- tell you what -- opine as to what I thought.

22 Q All right. And is it correct that you do not
23 hold yourself out to be an expert on -- on the city's
24 liability in this case?

25 A I have no idea about city liability here.

April 01, 2021

1 Q Right. And in the process of drafting this
2 report, you didn't talk to any Ferguson employees,
3 correct?

4 A Correct.

5 Q And you didn't talk to anybody who had ever
6 been jailed by Ferguson; is that correct?

7 A That would be correct.

8 Q Did you talk to anybody who was ever present in
9 court in front of Judge Brockmeyer?

10 A No.

11 Q Did you -- did you review any -- any racist
12 emails that were sent by City of Ferguson employees?

13 MR. HELLMICH: Object to the form of the
14 question as being argumentative.

15 A I'm not sure what that means, but, no.

16 Q Okay. Did you talk to Judge Brockmeyer
17 separately or -- did you talk to Judge Brockmeyer at
18 all, I should say?

19 A No.

20 Q Okay. And you didn't review correction officer
21 testimony, right?

22 A No.

23 Q You didn't review the testimony of prosecutor
24 Stephanie Karr?

25 A I saw her name mentioned, but that's it.

April 01, 2021

1 Whatever is in there in his depo is all I know.

2 Q Okay. You did not review the testimony of
3 court clerks, Mary Ann Twitty or Chrissy Lampersech
4 (phonetic)?

5 A No, except what you brought up in the
6 deposition of Brockmeyer.

7 Q Right. Only as it would fit within
8 Brockmeyer's -- Brockmeyer's testimony. But you didn't
9 review any of those -- because those women were also
10 deposed, and you didn't review their depositions,
11 correct?

12 A I did not.

13 Q Okay. All right, Judge. Could I ask you to
14 turn to your -- your resumé or your CV.

15 Could I ask you to turn -- let's just start:
16 Do you recognize these three pages to be the CV that you
17 submitted within your report, right?

18 A Yes.

19 Q Great. Could I ask you to turn to the third
20 page? We looked -- we talked a little bit earlier, I
21 just want to make sure, I've got author of three
22 different documents: "CLE Chapter on Trial Tactics For
23 Domestic Cases," "Division of Martial Property" and
24 "Annual Update on Family Law."

25 Any other -- besides those three, any other

1 Q Okay. Do you know whether or not the topic of
2 those compliance hearings relates to Missouri -- to
3 Ferguson's courts compliance with Ferguson law?

4 A I do not.

5 Q Okay. So you're not sure whether that's an
6 issue that gets addressed?

7 A I -- I'm not sure whether they're -- they're
8 worried about there being compliance in Missouri law.

9 Q Okay. Another thing -- another document that
10 you rely on is the Department of Justice report. How
11 did the -- and that's what is often called the Ferguson
12 report, just so that we understand each other.

13 How did the Department of Justice report inform
14 your findings or the work that you did to draft this
15 report?

16 A Well, I looked for, you know, what their report
17 said and -- in terms of -- and then seeing what they --
18 what their positions were and then looked -- could
19 analyze -- thinking to my -- to myself and analyzing
20 what the state's position was.

21 And again going back to my -- my task here is
22 to say were they in compliance with state law, not
23 necessarily federal law, and that was in the -- in
24 looking at that -- to the extent that that may or may
25 not have informed me, I thought it was prudent that I

1 to express and tell you what -- whether they can or
2 cannot comply on a financial side before you're going to
3 incarcerate them.

4 Q Okay. And I -- I would imagine that some of
5 these documents you reviewed ultimately did not inform
6 your final report; is that correct?

7 A That would be correct.

8 Q Sure. And is Bearden one of those documents?

9 A I don't -- I guess I'm not sure how to -- give
10 you -- be responsive. I think Bearden comes into play
11 as you're reviewing the process that I was analyzing or
12 looking at and the changes in the law and the rules in
13 the intervening time from the -- the -- just prior to
14 and after Senate Bill 5 and as where they -- as where
15 they headed.

16 And they seemed to -- you know, I read the
17 rules as being more particular about having show cause
18 hearings which I thought probably came from Bearden, so
19 to say that it -- you know, it had some effect on there,
20 but I wasn't looking for Bearden applications in what I
21 was doing.

22 Q Okay. Another case on there was County of
23 Riverside versus McLaughlin. That's just right
24 underneath Bearden. Did anything that you read in the
25 County of Riverside case influence or relate to

1 something that you wrote in your report?

2 A Not directly.

3 Q Okay. How about the Dixon versus City of
4 St. Louis?

5 A Well, I thought that was interesting, I think
6 particularly the timeline. My recollection was it's
7 like -- it was around 2011 that they were talking about.
8 But you know, I don't think that one's over, is it?

9 So -- but I, you know -- I'm -- you know, I
10 mean, I thought all those things are relevant in looking
11 at what is the stature of where you are, but not
12 necessarily on the state law side and not necessarily
13 what your petition is seeking to do. You're looking at
14 a different -- in a different viewpoint, at least in my
15 mind.

16 So from, again, what I was asked to opine on I
17 don't know that it had a lot to do, but I -- I took it
18 in. I thought it was relevant enough to review and to
19 consider.

20 Q Okay. So you reviewed it, and it -- fair to
21 say you can't particularly identify a section of the
22 report that was informed by your review of that
23 document?

24 A I don't -- no, I don't think there was a
25 particular part that was informed by that. I don't -- I

April 01, 2021

1 task, to be honest with you. But to summarize it, I --
2 I don't know, it's -- it's a summary based upon what was
3 told by Judge Brockmeyer in conjunction with what the
4 rules said and then talking about the element of the
5 rules as they are today.

6 And I thought it was -- the summary was
7 important to show that it's -- things have changed since
8 2010 and Brockmeyer's reign when he was the judge in
9 that division.

10 So summary, I don't know, you know, you're --
11 you're catching on words that just frankly came out of
12 my brain but didn't mean as much as you seem to be
13 attaching them -- to them, so I don't know what -- I
14 don't really know how to answer any more than that.

15 Q Okay. Am I correct that your report does
16 not -- does not seek to -- to have you bring your
17 expertise into any Ferguson city practices as -- as they
18 relate to jailing?

19 A Corrects.

20 Q Or -- or any city police practices?

21 A Correct.

22 Q Okay. And then at -- I'm at the second full
23 paragraph on page 5. You say, "My opinions reached in
24 this case are based on my review of the referenced
25 material and my above-described knowledge and experience

1 that regard, no.

2 Q Are of any -- are you aware of anything the
3 court did in that regard?

4 A I'm -- I'm not aware, but based upon the
5 testimony, it happened all the time.

6 Q Tell me what you mean by "all the time."

7 A He couldn't -- my recollection of his
8 deposition, he couldn't tell you how many times he --
9 he -- I think he even said that. It happened all the
10 time. He would run into people in the grocery store or
11 something, and someone would say something.

12 But, you know, almost everybody that comes in
13 says that, and most of the time people are -- I -- I
14 can't -- I don't know what they were doing specifically.

15 Q All right. I want to ask you about number 4.
16 Would you let me know once you've read number 4?

17 A Okay.

18 Q I want to make sure I understand how opinions 3
19 and 4 interact.

20 Am I right to read number 3 as to be the
21 pre-SB5 era and number 4 to be the to post-SB5 area?

22 A As I'm looking at it, yes.

23 Q Okay. That's helpful.

24 And you agree that the entirety of this opinion
25 is based off of your understanding of Missouri state law

1 and not federal Constitutional law, right?

2 A I've said before.

3 Q And that applies here, right?

4 A Yes.

5 Q Okay. You say, "Following the enactment of
6 SB5, Missouri statutes and rules provide that the
7 municipal judge must consider a defendant's ability to
8 pay when assessing fines."

9 What is your understanding of the precise
10 things that a judge must consider when assessing fines?

11 A I don't think it says a precise thing of what a
12 judge must consider.

13 Q Okay. So are there any specific things that --
14 that your understanding of these laws and rules say that
15 a judge must consider?

16 A There's a whole bunch. There's a section in it
17 that describes everything from whether -- you know,
18 their jobs, their -- their families, their
19 relationships, whether they have a driver's license.
20 There's a whole litany, and in the midst of all those is
21 a discussion about the ability to pay.

22 Q All right. And is your understanding that
23 every time a judge assesses a fine now in the post-SB5
24 era, that the judge must go through those -- that
25 litany?

April 01, 2021

1 schedule, they could be held pursuant to that bond, but
2 if there's not --

3 Q Okay.

4 A -- on the bond schedule, then they need to be
5 released within 24 hours.

6 Q All right. And -- and you emphasized that --
7 that "or other process," correct? That's important for
8 you in the interpretation of the statute, right?

9 A It is.

10 Q And one of the things that -- and you believe
11 that the "or other process" means that the -- that the
12 bond schedule was a sufficient process; is that correct?

13 A That's correct.

14 Q And what's your citation for that?

15 A I don't have one.

16 Q Did you do any research about this topic?

17 A I couldn't find anything that would suggest --
18 say that to me.

19 Q What did you look for?

20 A A definition of "other process."

21 Q Uh-huh.

22 A I'm trying to think of what it might be that --
23 what the other process might be. What the --

24 I also looked at Senate Bill 5 which dropped
25 that out which meant that -- to me that there was

1 potentially -- no one else might -- could figure it out
2 either.

3 Q Okay. Did you -- so I'm getting ahead of
4 myself here on exhibits. Can we please label 544.170 as
5 exhibit -- as Exhibit 7. And then I'm going to show you
6 Exhibit 8, which is MO PRAC, 28 MO PRAC 1 -- section
7 1.7. It is called the 24-hour rule.

8 Judge, did you review this document in reaching
9 your conclusion about probable cause?

10 A No, I did not.

11 Q Why not?

12 A I don't know why not.

13 Q Will you read first -- will you read the first
14 sentence here at paragraph A?

15 A "Effective August 2005, a person arrested
16 without a warrant must be released unless a warrant is
17 issued by a judge within 24 hours of the arrest."

18 Q And this was written by Judge Dueker, correct?

19 A That's what it says.

20 Q Yeah. You disagree with Judge Dueker, don't
21 you?

22 A That's -- yes, I do.

23 Q Okay. You think Judge Dueker's interpretation
24 is wrong?

25 A Yes, I do.

1 Q Okay. And you can't cite to any authority for
2 Judge Dueker being wrong?

3 A I -- I can't find anyone that says he's right
4 either, but I have -- I don't know if there's any cases.
5 If there's an a case on it that I missed, then I'm glad
6 to look at it.

7 Q Have you reviewed this case that Judge Dueker
8 notes here, In Re: Green, 593 S.W.2d 518?

9 A I can't say that as I have. It sounds familiar
10 for some reason, but I don't know that I -- I don't know
11 that I have.

12 Q Would you agree that -- that if Judge Dueker is
13 right about a 24-hour requirement, would you agree that
14 your opinion in number 7 is wrong?

15 A If Judge Dueker is right?

16 Q Yes.

17 A Well, if he's -- if he's right, then I'm wrong.

18 Q Okay.

19 A If he's right. But just because he's Judge
20 Dueker doesn't mean he's right.

21 Q There's not a lot Judge Dueker and I agree on,
22 I can tell you that much, but we may agree on this one.

23 Let's look at opinion 8, Judge.

24 A Okay.

25 Q You refer here to "the policies, practices and

1 have been assessed a fine, a fee, have some -- be on
2 some sort of a bond either whether -- a bond, or so --
3 so they therefore are surcharged. A surcharge comes
4 from a surcharge based upon you did something that
5 caused a surcharge to be assessed. So the only way
6 you're going to be there is you had to have at some
7 point appeared before the court.

8 Q Okay. And do you see the last sentence of this
9 paragraph, "This is further supported by the fact that a
10 substantial percentage of defendants were given time to
11 pay their fine"?

12 A Yes.

13 Q What is your basis for that sentence?

14 A I believe I -- that came from Brockmeyer's
15 statement. I think he said that. That's the only basis
16 I have.

17 Q Do you -- did he use the term a substantial
18 percentage?

19 A I'm not sure he did.

20 Q Okay. So your only reliance on -- when you
21 state that there is -- that a substantial percentage of
22 people were given time, the only thing you're relying on
23 there is somewhere in Brockmeyer's deposition?

24 A Yes. I don't --

25 Q Are you able to tell me what page?